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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,015	03/26/2004	Patrick J. Merriman	MA3.001	7737

23893 7590 10/18/2005

TIMOTHY E SIEGEL  
1868 KNAPPS ALLEY  
SUITE 206  
WEST LINN, OR 97068

EXAMINER
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SLACK, NAKO N

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



# Office Action Summary

Application No.

10/810,015

Applicant(s)

MERRIMAN ET AL.

Examiner

Naoko Slack

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 10-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/22/04, 4/19/04</u> . | 6) <input type="checkbox"/> Other: _____  |



## **DETAILED ACTION**

### ***Election/Restrictions***

In response to the restriction requirement of the prior action, applicant has elected Group I, claims 1-9 by telephone on September 30, 2005. Claims 10-24 are drawn to non-elected invention. An examination of claims 1-9 is herein presented.

### ***Claim Objections***

Claim 6, line 2, - - than - - should be inserted after "less".

Claim 8 appears to depend from claim 1 in error, as there is no antecedent basis for "said concrete tile". For purposes of examination, it is assumed that claim 8 was intended to depend from claim 2.

Correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.



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Claims 1, 6, 7 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,796,095B2 to Azar et al.

Claim 1:

Azar et al. discloses a method of providing a paved area having a predetermined set of surface features, said method comprising:

- (a) providing a paving tile (floor tile 20) having said predetermined set of surface features;
- (b) pouring wet concrete (18) into a predetermined area;
- (c) removing a predetermined thickness of said wet concrete in a predetermined portion of said predetermined area (column 3, lines 42-46), thereby creating a lower, upwardly facing surface in said predetermined portion;
- (d) placing said paving tile on said lower, upwardly facing surface; and
- (e) permitting said wet concrete underneath and about said paving tile to cure.

Claim 6:

Azar et al. discloses that the tile is less than 1.57 inch thick, as best seen in Figure 1 where the tile (20) has a thickness less than the underlying layer (18) which is  $\frac{1}{2}$ " – 1" (column 3, lines 51-52).

Claim 7:

Azar et al. discloses that an adhesive may be spread on said bottom surface prior to step (d), (column 4, lines 24-26).



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 5, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,796,095B2 to Azar et al. in view of US Patent 6,890,124B2 to Provenzano, III.

Claim 2:

While Azar et al. discloses a tile, Azar et al. does not specify a concrete paving tile; however, concrete paving tiles are well known in the art. For example, Provenzano discloses a concrete paving tile (column 3, lines 27-29). In view of Provenzano, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a concrete paving tile in Azar et al.'s method of providing a paved area, as poured concrete tiles may be prefabricated to facilitate the tiling process, a benefit desired by Azar et al.

Claims 4 and 5:

Provenzano's paving tile has protrusions from the top surface which comprise truncated domes (column 3, lines 47-50).

Claims 8 and 9:

Provenzano discloses additional concrete tiles placed adjacent to one another (Figure 2), the additional concrete tiles also including surface features (14).



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Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,796,095B2 to Azar et al. in view of US Patent 6,890,124B2 to Provenzano, III. As applied to claim 2 above and further in view of Japanese Patent 2005047233 to Sakai et al.

Claim 3:

While Azar et al. discloses a tile, Azar et al. does not specify a pre-stressed concrete paving tile; however, a pre-stressed concrete member is known in the art. Sakai teaches a prestressed concrete pavement tile (page 1, abstract, paragraph 1). In view of Sakai et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a pre-stressed concrete tile in Azar et al.'s method of providing a paved area for the benefit of improved strength.

#### ***Prior Art***

The following references are considered relevant prior art:

US Patent 5,320,790 to Lowe discloses a method to produce a paved tactile warning system.

US Patent 5,302,049 to Schmanski discloses a paving tile for the visually handicapped.



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***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naoko Slack whose telephone number is (571) 272-6848. The examiner can normally be reached on Mon-Fri (6:00 am-2:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Naoko Slack  
Primary Examiner  
Art Unit 3635

NS  
October 4, 2005